

APPENDIX F**CONDITIONS****I. PROGRAM CARRIAGE CONDITION TO PREVENT DISCRIMINATION AGAINST ALL FORMS OF UNAFFILIATED VIDEO PROGRAMMING**

- Neither News Corp nor DirecTV will discriminate against unaffiliated programming services in the selection, price, terms or conditions of carriage.

II. PROGRAM ACCESS CONDITIONS TO ENSURE NON-DISCRIMINATORY ACCESS TO ALL SATELLITE CABLE PROGRAMMING

- News Corp will not offer any of its existing or future national and regional programming services on an exclusive basis to any MVPD and will continue to make such services available to all MVPDs on a non-exclusive basis and nondiscriminatory terms and conditions.
- DirecTV will not enter into an exclusive distribution arrangement with any Affiliated Program Rights Holder.¹
- As long as Liberty Media holds an Attributable Interest in News Corp., DirecTV will deal with Liberty Media with respect to programming services it controls as a vertically integrated programmer subject to the program access rules.
- DirecTV may continue to compete for programming that is lawfully offered on an exclusive basis by an unaffiliated program rights holder (e.g., NFL Sunday Ticket).
- Neither News Corp. nor DirecTV (including any entity over which either exercises control) shall unduly or improperly influence: (i) the decision of any Affiliated Program Rights Holder to sell programming to an unaffiliated MVPD; or (ii) the prices, terms and conditions of sale of programming by any Affiliated Program Rights Holder to an unaffiliated MVPD.
- These commitments will apply to News Corp. and DirecTV for the later of (1) as long as the FCC deems News Corp. to have an Attributable Interest in DirecTV and the FCC's program access rules are in effect (provided that if the program access rules are modified these commitments shall be modified to conform to any revised rules adopted by the FCC) or (2) if these commitments are embodied in a consent decree or other appropriate order issued by or

¹ "Affiliated Program Rights Holder" includes (i) a program rights holder in which News Corp. or DirecTV holds a non-controlling "Attributable Interest" (as determined by the FCC's program access attribution rules); and (ii) a program rights holder in which an entity holding an non-controlling Attributable Interest in News Corp. or DirecTV has actual knowledge of such entity's Attributable Interest in such program rights holder. At the present time Liberty Media is the only entity covered by this definition. Nonetheless this commitment goes beyond the program access rules as DBS operators are not included within the exclusivity prohibition. See 47 C.F.R. § 1002(c).

- News Corp. will file a “final offer” with the AAA within two business days of being notified by the AAA that a formal demand for arbitration has been filed by the MVPD.
- The MVPD’s final offer may not be disclosed until the AAA has received the final offer from News Corp.
- The final offers shall be in the form of a contract for the carriage of the programming for a period of at least three years. The final offers may not include any provision to carry any video programming networks or any other service other than the RSN.

Rules of Arbitration

- The arbitration will be decided by a single arbitrator under the expedited procedures of the commercial arbitration rules, then in effect, of the AAA (the “Rules”), excluding the rules relating to large, complex cases, but including the modifications to the Rules set forth in Appendix B.
- The parties may agree to modify any of the time limits set forth above and any of the procedural rules of the arbitration; absent agreement, however, the rules specified herein apply. The parties may not, however, modify the requirement that they engage in final-offer arbitration.
- The arbitrator is directed to choose the final offer of the party that most closely approximates the fair market value of the programming carriage rights at issue.
- Under no circumstances will the arbitrator choose a final offer that does not permit News Corp. to recover a reasonable share of the costs of acquiring the programming at issue.
- To determine fair market value, the arbitrator may consider any relevant evidence (and may require the parties to submit such evidence to the extent it is in their possession),³ including, but not limited to:
 - current or previous contracts between MVPDs and RSNs in which News Corp. does not have an interest as well as offers made in such negotiations (which may provide evidence of either a floor or a ceiling of fair market value);
 - evidence of the relative value of such programming compared to the RSN programming at issue (e.g., advertising rates, ratings);
 - contracts between MVPDs and RSNs on whose behalf News Corp. has negotiated before News Corp. acquired control of DirecTV;
 - offers made in such negotiations;
 - internal studies or discussions of the imputed value of RSN programming in bundled agreements;
 - other evidence (including internal discussions) of the value of RSN programming;
 - changes in the value of non-News Corp. RSN programming agreements;
 - changes in the value or costs of News Corp. RSN programming, or in other prices relevant to the relative value of News Corp. RSN programming (e.g., advertising rates).
- The arbitrator may not consider offers prior to the arbitration made by the MVPD and News Corp. for the programming at issue in determining the fair market value.

³ We clarify that, by “possession,” we mean actual possession or control.

- This condition will expire six years after the release of the Order.
- The Commission will consider a petition for modification of this condition if it can be demonstrated that there has been a material change in circumstance or the conditions have proven unduly burdensome, rendering the condition no longer necessary in the public interest.

IV. CONDITIONS CONCERNING ACCESS TO LOCAL BROADCAST TELEVISION STATION SIGNALS

When negotiations fail to produce a mutually acceptable set of price, terms and conditions for a retransmission consent agreement with a local broadcast television station that News Corp. owns and operators or on whose behalf it negotiates retransmission consent, an MVPD may choose to submit a dispute to commercial arbitration in accordance with the following procedures:

Commercial Arbitration Remedy

- The commercial arbitration condition commences following the expiration of any existing retransmission consent agreement.
- Following such expiration, or 90 days after a first time request for retransmission consent, a MVPD may notify News Corp. within five business days that it intends to request arbitration over the terms and conditions of retransmission consent.
- Upon receiving timely notice of the MVPD's intent to arbitrate, News Corp. must immediately allow continued retransmission of the broadcast signal under the same terms and conditions of the expired retransmission consent agreement as long as the MVPD continues to meet the obligations set forth in this condition.
- Retransmission of the broadcast signal during the period of arbitration is not required in the case of first time requests for carriage.
- "*Cooling Off Period.*" Following the MVPD's notice of intent to submit the dispute to arbitration, but prior to filing for formal arbitration with the American Arbitration Association ("AAA"), the MVPD and News Corp. will enter a "cooling-off" period during which negotiations will continue.
- *Formal Filing with the AAA.* The MVPD's formal demand for arbitration, which shall include the MVPD's "final offer," may be filed with the AAA no earlier than the fifteenth business day after the expiration of the retransmission consent agreement and no later than the end of the twentieth business day following such expiration. If the MVPD makes a timely demand, News Corp. must participate in the arbitration proceeding.
- The AAA will notify News Corp. and the MVPD upon receiving the MVPD's formal filing.
- News Corp. will file a "final offer" with the AAA within two business days of being notified by the AAA that a formal demand for arbitration has been filed by the MVPD.
- The MVPD's final offer may not be disclosed until the AAA has received the final offer from News Corp.
- The final offers shall be in the form of a contract for the retransmission of the broadcast signal for a period of three years. The final offers may not include any provision to carry any video programming networks or any other service other than the broadcast signal.

- Judgment upon an award entered by the arbitrator may be entered by any court having competent jurisdiction over the matter, unless one party indicates that it wishes to seek review of the award with the Commission, and does so in a timely manner.

Review of Award by the Commission

- A party aggrieved by the arbitrator's award may file with the Commission a petition seeking *de novo* review of the award. The petition must be filed within 30 days of the date the award is published.
- The MVPD may elect to continue to retransmit the broadcast signal pending the FCC decision, subject to the terms and conditions of the arbitrator's award.
- In reviewing the award, the Commission will examine the same evidence that was presented to the Arbitrator and will choose the final offer of the party that most closely approximates the fair market value of the programming carriage rights at issue.
- The Commission may award the winning party costs and expenses (including reasonable attorney fees) to be paid by the losing party, if it considers the appeal or conduct by the losing party to have been unreasonable. Such an award of costs and expenses may cover both the appeal and the costs and expenses (including reasonable attorney fees) of the arbitration.

Provisions Applicable to Small MVPDs

- An MVPD meeting the Commission's definition of "small cable company" may appoint a bargaining agent to bargain collectively on its behalf in negotiating with News Corp. for carriage of the programming subject to this condition and News Corp. may not refuse to negotiate with such an entity.⁶ The designated collective bargaining entity will have all the rights and responsibilities granted by these conditions.
- When dealing with MVPDs with fewer than 5,000 total subscribers, we require News Corp. to either elect "must-carry" status or negotiate retransmission consent for its owned and operated stations and any affiliated station on whose behalf it negotiates retransmission consent without any requirements for cash compensation or carriage of programming other than the broadcast signal.

Additional Provisions Concerning Arbitration

- No later than 20 business days prior to the expiration of a must-carry election or retransmission consent agreement with an MVPD, News Corp. must provide the MVPD with a copy of the conditions imposed in this Order. News Corp. must provide a copy of the conditions imposed in this Order within 10 business days of receiving a first time request for retransmission consent.
- This condition will expire six years after the release of the Order.
- The Commission will consider a petition for modification of this condition if it can be demonstrated that there has been a material change in circumstance or the condition has

⁶ See *Sixth Report and Order*, 10 FCC Rcd 7393 (1995)

APPENDIX G

LICENSES AND AUTHORIZATIONS TO BE TRANSFERRED

File No. SAT-T/C-20030502-00083 is the Lead File number for the space station series of applications. The complete list of File Numbers follows:

Satellite Space Stations:

File Number	Licensee/Call Signs
SAT-T/C-20030502-00083	DIRECTV Enterprises, LLC <i>Call Sign(s):</i> DBS8402; S2369; DBS8402; DBS8402; S2430; S2417; DBS8804
SAT-T/C-20030505-00084	Hughes Network Systems, Inc. <i>Call Sign(s):</i> S2132; S2133; S2185; S2187; S2188; S2190; S2191
SAT-T/C-20030502-00085	PanAmSat Licensee Corporation <i>Call Sign(s):</i> S2368; PAS-2R, PAS-4; CS91004; PAS-6; PAS-8; S2359, PAS-9, S2229, S2380; S2382; S2131; S2128; S2381; S2377; GAL V; GAL VIII(i); S2146; S2378; S2253; S2422; SBS-6; KS39
SAT-T/C-20030502-00086	USSB II, Inc. <i>Call Sign(s):</i> DBS8107; DBS8107

File No. SES-T/C-20030502-00582 is the Lead File number for the earth station series of applications. The complete list of File Numbers follows (see also Public Notice, Report No. SES 00565, December 31, 2003):

Satellite Earth Stations:

File Number	Licensee/Call Signs
SES-T/C-20030502-00582	Hughes Network Systems, Inc. <i>Call Sign(s):</i> E000166, E030007; E880787; E880788; E880789; E881110; E881111; E881112; E890426; E890427; E890428; E890628; E890629; E890630; E891001; E891002; E900192; E900682; E940455; E940460; E950471, E950472; E950473; E970067; E990170 (VSAT Transmit/Receive)
SES-T/C-20030502-00583	Hughes Network Systems Limited <i>Call Sign(s):</i> E000362; E010187; E020195; E020205; E020206; E020207; E020208 (Transmit/Receive)
SES-T/C-20030502-00584	Hughes Network Systems, Inc. <i>Call Sign(s):</i> E020241, E020242; E030004; E030005; E030006; E880970; E881109, E890627; E900013; E910612; E940478; SES-STA-20021101-01942 (Transmit/Receive)
SES-T/C-20030502-00585	USSB II, Inc. <i>Call Sign(s):</i> E930437 (Receive Only)
SES-T/C-20030502-00586	USSB II, Inc. <i>Call Sign(s):</i> E930485 (Transmit Only)
SES-T/C-20030502-00587	California Broadcast Center, LLC <i>Call Sign(s):</i> E010237; E020091 (Transmit/Receive)

0001293894 Hughes Electronics Corporation
 Call Sign(s): WNEU9099 (MG)

0001293921 Hughes Network Systems, Inc.
 Call Sign(s): WPVW320 (IG)

**SEPARATE STATEMENT OF
CHAIRMAN MICHAEL K. POWELL**

Re General Motors Corporation and Hughes Electronics Corporation, Transferors and The News Corporation Limited, Transferee, for Authority to Transfer Control

The Commission has now completed a multi-year review, involving two separate transfer applications, to transfer control of Commission licenses involving nationwide DBS provider DirecTV. Unlike the transfer application involving Echostar Communications—which ultimately became the first major transaction blocked by this Commission in decades because it would have harmed the public interest by combining the only two nationwide DBS providers in the country¹—this transaction, as conditioned, involving General Motors, Hughes Electronics Corporation and The News Corporation (“News Corp”) will bring significant benefits to the American public.

As a result of this transaction, DirecTV will be a stronger competitor in the pay-television space, especially against market-leading cable operators. This increased competition to cable will spur new innovative services and programming, lower prices and increased service quality not just to current and future DirecTV subscribers, but to all pay-television subscribers as cable operators throughout the country will be forced to respond to this new nationwide competitive threat.

This transaction, as proposed, did raise concerns about use and abuse of market power. Our strict and narrowly tailored conditions, however, will prevent the realization of these harms to the public. For example, we were concerned that the merged entity would discriminate against unaffiliated programmers, preventing DirecTV subscribers from accessing compelling programming from a multiplicity of diverse sources. To address this concern, we condition this transaction to ensure that unaffiliated programmers have access to the DirecTV platform on nondiscriminatory terms and conditions.

We were concerned that the merged entity would force across-the-board MVPD price increases by using its increased incentive and ability to threaten to or actually withhold highly valued programming by consumers—namely local broadcast signals and regional sports networks²—to extract excessive rents or unfair carriage concessions from MVPDs—programming costs almost certain to be passed on to subscribers. We addressed this concern by setting up a commercial arbitration remedy that will help reign in excessive programming price increases and ensure that the public will not lose access to the

¹ See *Application of EchoStar Communications Corporation, General Motors Corporation, Hughes Electronics Corporation (Transferors) and EchoStar Communications Corporation (Transferees)*, 17 FCC Rcd 20559 (2002).

² One should not view our conditions regarding retransmission agreements or regional sports networks as anything other than a condition to mitigate a merger-specific harm identified in the record of this proceeding. It, especially, should not be interpreted as an industry-wide declaration of the Commission concerning the ongoing commercial disputes between MVPDs and broadcasters or regional and national sports programming networks. The broadcast industry and the sports programming market continue to evolve on all fronts. In the case of sports, for instance, increased channel capacity on MVPD systems and advances in broadband Internet access are providing leagues, teams, MVPD providers and sports programming networks with new opportunities for sports distribution. In addition, there are signs in the marketplace to suggest that the extraordinary increases in license fees paid by sports networks to teams over the past year—which then get passed on to MVPDs, then on to consumers—is stabilizing. I continue to believe these issues are best resolved in the marketplace.

**DISSENTING STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re. General Motors Corporation and Hughes Electronics, Corporation, Transferors and The News Corporation Limited, Transferee, For Authority to Transfer Control

Here we go again. Today the Commission demonstrates how serious -- and seriously misguided -- it was when it voted on June 2 to eviscerate media concentration protections. Presented with the opportunity to signal whether it intends to protect the important goals of diversity, competition, and localism, or to allow instead ever greater and more threatening levels of media consolidation, the majority flashes the green light for the next great wave of media consolidation.

News Corp was already a media giant:

- In the U.S., News Corp. owns television stations reaching over 44 percent of the country. (WNYW-5, New York; WWOR-TV-9, New York; KTTV-11, Los Angeles; KCOP-13, Los Angeles; WFLD-32, Chicago; WPWR-TV-50, Chicago; WTXF-TV-29, Philadelphia; WFXT-25, Boston; KDFW-4, Dallas; KDFI-27, Dallas; WTTG-5, Washington, DC; WDCA-20, Washington, DC; KMSP-TV-9, Minneapolis; WFTC-29, Minneapolis; WJBK-2, Detroit; WAGA-5, Atlanta; WUTB-24, Baltimore; KRIV-26, Houston; KTXH-20, Houston; WTVT-13, Tampa Bay; WRBW-65, Orlando; WOFL-35, Orlando; WJW-8, Cleveland; KSAZ-TV-10, Phoenix; KUTP-45, Phoenix; KDVR-31, Denver; KTVI-2, St. Louis; WITI-6, Milwaukee; WDAF-TV-4, Kansas City; KSTU-13, Salt Lake City; WBRC-6, Birmingham; WHBQ-TV-13, Memphis; WGHP-8, Greensboro; KTBC-7, Austin; WOGX-51, Ocala).
- In nine markets, it owns more than one television station (New York, Los Angeles, Chicago, Dallas, Washington, DC, Minneapolis, Houston, Orlando and Phoenix).
- It owns a major national broadcast network (Fox).
- It owns numerous cable and DBS channels, including regional sports networks across the country (among them FX, Fox News Channel, Fox Movie Channel, Fox Sports, Fox Sports en Espanol, National Geographic Channel, Speed Channel).
- It owns the most widely used electronic program guide for navigating television content (Gemstar-TV Guide).
- It owns newspapers, magazines, and publishing (including *New York Post*, *The Weekly Standard* and HarperCollins Publishers).
- It owns studios (including Twentieth Century Fox, Searchlight, Fox Television Studios, Twentieth Century Fox Television).
- It will now own a nationwide multi-channel direct broadcast satellite system (DirecTV).
- And it will now also own a major fixed satellite service provider that carries video broadcast and cable programming for delivery to distribution systems (PanAmSat).

Given the majority's analysis, I am concerned that this merger is merely the beginning of another wave of consolidation. News Corp. has indicated it may continue growing by acquiring additional television duopolies and other properties. Indeed, the majority apparently presumes that additional News Corp. acquisitions of television stations, radio stations, and newspapers is in the public interest under the Commission's new bright-line media ownership rules. And other Big Media conglomerates, encouraged by today's decision, will now feel emboldened or compelled to consolidate further. My service as a Commissioner has taught me that the response to one company's acquisition is almost invariably another company's request to grow bigger so that it can "compete" and "survive."

The majority's conclusion that broadcast stations do not compete in the same market as cable and DBS, along with its unwillingness closely to examine harms to diversity and localism, make clear that this Commission has no intention to slow, or even critically to examine, cross-platform mergers between broadcast stations and cable or DBS systems.

- ***Community Standards and Indecency:*** Some have suggested that there may be a link between increasing consolidation and increasing indecency on our airwaves. As I traveled across this country holding hearings and attending forums earlier this year, I heard time and again that ownership matters when it comes to what is offered up to viewers and listeners, particularly to our children. I am troubled that today's decision comes on the heels of complaints that News Corp. aired indecent material on the *2003 Billboard Music Awards* just last week. This is not the first instance of such viewer complaints against News Corp. Many of the indecency complaints I have seen come into the Commission involve stations owned by large media companies. I raise the issue here not because of any specific broadcast program, but because the Commission has refused to study the possible relationship between indecency and media concentration. I believe such a study is relevant to decisions such as the one we make today and that, indeed, we should not be making these decisions until we have credibly considered the matter. As we allow media conglomerates to grow ever larger, many Americans are concerned that the race to the bottom will accelerate and that broadcaster consideration for local community standards will continue to erode.

Yet, today, before we even consider these complaints or address the impact of increasing consolidation on increasing indecency, we reward News Corp. with a nationwide programming distribution system. And what will be the effect? Will we see even more attempts to air progressively coarser content? As we move towards more interactive programming, will we see gambling intrude itself into our homes on DirecTV as News Corp. provides on its overseas satellite system? Will we see wider distribution of shows that continue to push the envelope of outrageousness even further?

- ***Increasing Consumer Rates:*** Applicants cite economic efficiencies that will result from their agreement and claim that the merger will give them the scale and scope to compete more effectively. There may well be some such efficiencies, although the baleful tale of many recent high visibility corporate mega-mergers does not provide much proof of commercial success. Be that as it may, Applicants did not demonstrate that any of these alleged savings would be passed on to consumers nor did they evince great enthusiasm for so doing. It is telling that Applicants produced so little data as to how this transaction could possibly discipline rising cable rates. The likelihood of its doing so is so remote as to be invisible. Lower prices seldom ensue from industry combinations. When we approve a transaction that further increases concentration in programming production and distribution,

consumers to obtain a second dish to receive only some of the local broadcast stations in a market did not comply with the statute or Commission rules.

In sum, I simply cannot support the level of concentration by a single owner that will result from this merger absent compelling public interest circumstances. Unfortunately, I do not find that the potential public interest benefits of this transaction outweigh the real and potential harms. This decision is the wrong decision – wrong for the media industry, wrong for consumers, wrong for democracy in America.

**SEPARATE STATEMENT OF
COMMISSIONER KEVIN J. MARTIN**

Re: *General Motors Corporation and Hughes Electronics Corporation (Transferors) and News Corporation Limited (Transferee) for Authority to Transfer Control, Order, MB Docket No. 03-124)*

I support the Commission's decision to approve this transaction. While the merger of News Corp. and DirecTV presents potential harms and benefits, I believe that, on balance, the merger as conditioned will benefit consumers, competition, and the public interest.

I write separately to express my disappointment that a majority of my colleagues is unwilling to grant the public television community's request to clarify the requirements under the Satellite Home Viewer Improvement Act ("SHVIA") and specifically require that, in providing local-into-local service pursuant to SHVIA, DirecTV could not place certain local broadcast stations on wing satellites.¹

As I have stated before, I believe Congress provided that DBS operators would have the opportunity to carry local broadcast stations, but if they choose to do so, they would have to provide consumers with *all* the local broadcast stations.² These "carry one, carry all" provisions of SHVIA include a prohibition against discriminatory treatment of the broadcast signals.³ As I have explained in detail previously, I believe Congress's non-discrimination provision prevents DBS providers from placing "preferred" broadcasters on a main satellite and relegating certain "disfavored" broadcasters to a second satellite.⁴ Non-discrimination requires that all broadcast stations be placed on the same dish. The Association of Public Television Stations and the Public Broadcasting Service, therefore, are asking no more than to require the merged entity to comply with the governing statute and our rules when rolling out "local-into-local" service to consumers across America. Licensees must *always* comply with the statute and our rules, and I am disappointed that only one of my colleagues was willing to make this clear.

This is an unfortunate day for public television stations, religious broadcasters and Spanish language broadcasters—the stations most often relegated to the second dish. Indeed, over 31 public broadcast stations in 20 markets have been denied carriage on the same dish as other broadcasters. Local religious broadcast stations are almost uniformly placed on the second dish, if they are carried at all. Similarly, numerous Spanish language station owners have all documented to the Commission the discriminatory treatment that their stations receive; most are carried on the

¹ See Comments of the Association of Public Television Stations and the Public Broadcasting Service at 1 (June 16, 2003)

² See, e.g., Statement of Commissioner Kevin J. Martin and Commissioner Michael J. Copps Re: National Association of Broadcasters and Association of Local Television Stations Request for Modification or Clarification of Broadcast Carriage Rules for Satellite Carriers, Declaratory Ruling and Order, April 10, 2002 ("Two-Dish Statement"). See also 47 U.S.C. § 338(a)(1).

³ See 47 U.S.C. § 338(d).

⁴ See *Two-Dish Statement*. To the extent any Media Bureau decisions have been inconsistent with this interpretation of the statute, they have not been affirmed by the Commission and I believe they are in error.

**DISSENTING STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee, MB Docket No. 03-124

Deciding whether a fox should guard a hen house is a far more serious exercise than this Order reflects. Granted, the birds in this case are not hens but valuable satellites with a national footprint from which nearly 12 million people receive video programming through DirecTV. And the Fox in this case is already one of the world's largest media conglomerates, with a vast array of global content and distribution assets. The acquisition of Hughes Electronics Corporation by News Corporation (News Corp.) will result in unprecedented control over local and national media properties in one global media empire. Its shockwaves will undoubtedly recast our entire media landscape.

Never before has a single corporation been armed with a national video distribution platform; a major broadcast network; television stations in nearly every major media market – reaching more than 44 percent of the country – with guaranteed carriage rights on other distribution platforms; multiple cable networks (11 national and 22 regional, including sports networks with exclusive rights); a major film and television studio; newspaper, magazine and book publishing operations; significant video programming and broadcasting satellite backhaul capacity, and the leading program guide and programming-related technologies to facilitate a consumer's viewing experience. With this unprecedented combination, News Corp. could be in a position to raise programming prices for consumers, harm competition in video programming and distribution markets nationwide, and decrease the diversity of media voices. I wish the full dangers of this combination would have been more thoroughly examined and confronted.

This Order makes a mockery of the Commission's public interest test. Consumers have absolutely no assurance of benefiting in any way from the merger's claimed synergies, yet they potentially suffer great harm. From the onset, I have had grave concerns about this transaction, yet I have sought to impose meaningful conditions to make the Order better than it otherwise would have been. Unfortunately, not all of those conditions were imposed, and I do not believe that any supposed public interest benefits of this transaction outweigh its very real harms.

It has long been a goal of mine, and many other policymakers, to ensure that every community in America can get all of their local television signals directly from their satellite provider. That is why I am so disappointed that this Order does nothing to even hold News Corp. to the shallow promises they made to the Commission to provide local channels to consumers in all 210 television markets across the country. Instead, it limply adopts the requirement that DirecTV provide service to the top 130 markets by the end of 2004, leaving the smaller markets in Rural America high and dry.

I felt strongly that the Commission should require DirecTV to provide real local-into-local service, meaning every local broadcast television signal, over satellite to all 210 television markets across the country by 2006. It is especially critical to have required a firm date by which DirecTV must uplink and offer local broadcast signals for every television market in America, from the largest to the smallest. Consumers living in rural areas deserve the same benefits as their more urban counterparts.

Instead, I learned in the process of reviewing this matter that News Corp. has no intention of ever providing real local-into-local satellite service to every market in the country. A close examination of

likelihood that News Corp. can capitalize on a strategy of withholding consent to carry these programs, even temporarily. Small and medium sized cable operators and other distributors are particularly vulnerable to News Corp.'s enhanced bargaining power.

News Corp.'s bargaining clout is even more heightened for its regional sports networks, for which few, if any, competitive alternatives exist. In both the U.K. and Australia, News Corp. employs a strategy of seizing key sporting rights and using them to secure favorable carriage terms. Indeed, as early as 1996, Rupert Murdoch made clear his intention to use his company's formidable sports programming assets as a "battering ram" to squeeze out concessions from his rivals.

For this reason, the Order appropriately adopts a fair and neutral mechanism to resolve disputes, requiring News Corp. to agree to undertake binding arbitration with its distribution rivals. Any mitigation of harm that this arbitration condition brings, however, would be thwarted if News Corp. has the ability during the pendency of the arbitration to deny its rival the right to carry the disputed programming. So it is absolutely critical that the Order prevents News Corp. from yanking sports programming during the arbitration process. This may save consumers not only their viewing of popular programming, but the cost and other savings from what News Corp. could have otherwise battered out of its rivals and their customers. Empirical evidence in the record shows that dropping such programming harms viewers, leads to higher prices and results in significant losses to the competing multichannel video programming distributor.

Yet, the benefits of these conditions disappear without a trace after six years. I would have explicitly left room to extend these protections for up to six additional years, for a total of twelve years, and required the Commission to undertake a full review of the continued need for these conditions through a notice and comment proceeding. Given the duration of some of today's contracts, and the possibility that the identified harms of capitalizing on DirecTV's status persist, a mere six-year term does not suffice. The requirement for the Commission to undertake a full notice and comment proceeding would have provided the Commission valuable information to assess any harms of this merger, and would have kept a check on News Corp.'s incentive to use its new leverage to harm consumers.

In addition, to account for possible overall rate increases, I would have established a benchmarking process or pricing index mechanism to evaluate whether the merging parties are raising prices at a more accelerated pace than their historic pattern. Such a mechanism has been implemented in the past for vertical relationships between programmers and distributors. This benchmarking process would have ensured that rates not rise too quickly for all distributors, and would have been a better way to address the merger-specific harms identified in the Order.

I am deeply worried that with this extraordinary combination, News Corp. will be in a position to raise rates for all of its programming, thus driving up MVPD prices around the country and harming consumers. At the same time that it is competing with cable and other distributors for subscribers, it could raise the costs to those distributors for the underlying programming, or could pressure the companies for other benefits such as favorable channel placement. None of the merger's protections addresses the likelihood that News Corp. engages in profit maximizing behavior and raises programming prices for all distributors. In fact, in some ways, the merger conditions could be used to send valuable signals to other MVPDs about the prices, terms and conditions of programming carriage or the consequences of resisting News Corp.'s demands. Without quantifiable benchmarks or pricing standards, there is insufficient assurance to the public that this transaction will not result in increased prices for all.

"Take it or leave it" bargaining tactics would not convince me of a corporate commitment to good faith negotiation. With respect to diversity opportunities within its business units and in its programming, I urge continued efforts to promote diversity within the Fox Entertainment Group's employment, management and executive ranks. I am pleased to see a commitment by the companies to increase the amount of programming on DirecTV targeted at culturally, ethnically, and linguistically diverse audiences. Given the increased concentration in local media markets, I also expect to see such diversity reflected in the coverage of issues of concern to local communities or minority groups across the country. Diversity in viewpoints should be encouraged everywhere in our media.

I am troubled by reports that Fox's independent affiliates are having difficulty maintaining their independence in decisions involving programming or the use of their digital spectrum. Local control over programming is required by law and vital to our system of American broadcasting. It is the local stations, after all, that are accountable to the FCC for their community's standards of broadcasting.

These many concerns call for a more serious examination of the concentration resulting from the merger, or other more comprehensive structural or behavioral conditions. While this Order does contain some important protections, not all the effects on consumers and competition have been fully analyzed or remedied to assure fair competition and protection of consumer interests. I dissent.

I have many other concerns with this transaction. The merger furthers concentration in local media markets by consolidating ownership over local media outlets under one global media conglomerate. In major media markets across the country, it combines one, sometimes two, local television stations, with one of typically three major multichannel video programming distributors. In New York, for example, it combines a television duopoly, a newspaper, and a DBS operator. In Puerto Rico, some cable subscribers are served by a system owned by Liberty Media, a significant investor in News Corp. who stands to benefit from DirecTV's gains. The Commission should have conducted a specific market-by-market review of the effects of consolidation on competition, localism and diversity in particular local media markets. Moreover, under the Commission's relaxed media ownership rules, News Corp. would be free to acquire additional duopolies, radio stations and newspapers in those same local media markets, furthering their control over what local viewers see, hear and read.

This merger also threatens disruptive effects for competing programmers, particularly independent programmers and producers. Even without the merger, through the use of retransmission consent, News Corp. has been able to expand its cable networks faster than any other cable programmer. I will continue to monitor closely whether News Corp. provides opportunities for both established and new networks, particularly new entrants, to negotiate carriage on fair and reasonable terms on DirecTV. New Spanish-language networks, for example, have reached agreement with cable providers and are attempting to negotiate carriage on DirecTV. Given DirecTV's history of promoting a diversity of programming, I would be concerned if its acquisition by News Corp. resulted in a loss of diverse, independent or minority-owned programming to an eager public in order to favor networks it owns.

I am also concerned with News Corp.'s ability to leverage its program guide and interactive holdings. Gemstar-TV Guide, with a leading position in electronic and interactive program guides, recently gave DirecTV use of its intellectual property, technology and brand. I expect this same flexible licensing approach to continue to be made available to others on a timely and fair basis.

News Corp. has a history of taking risks, and the Applicants have committed to launching several new interactive services on the DirecTV platform in 2004, using a new DirecTV user interface and middleware licensed or provided by News Corp. subsidiaries. Provided this "enhanced viewing experience" moves beyond the more rudimentary interactive gaming services offered today, this promises to benefit consumers in significant ways. With the prospect of interactive services more imminent, the Commission must be cognizant of the ways in which a distributor or particular middleware or program guide vendor could favor affiliated programming to the detriment of non-affiliated programmers. I would be concerned if News Corp. stood as a gatekeeper to interactive services and features or demanded from rival distributors exclusive use of particular EPG, IPG, interactive middleware or security software or systems during its carriage negotiations. While the software solutions for interactivity are still emerging, DirecTV gives News Corp.'s subsidiaries an increased incentive and ability to discriminate in software and applications, or to endure losses in one business unit for the greater good of the corporate whole. Should problems emerge, they could be addressed through general rulemakings or through recourse to the nation's antitrust authorities.

I sympathize with my colleagues who seek to resolve the placement of local broadcast stations on second satellite dishes under the Satellite Home Viewer Improvement Act. I believe this can be accomplished through a general rulemaking, and I have been assured by the Chairman that the Commission will resolve this issue early next year.

I caution that as a large and prominent global media conglomerate, it is incumbent on News Corp. to lead in serving the overall public interest and modeling appropriate behavior for the industry.

their commitments revealed them to mean that they consider it enough to offer some reasonably close local station as part of an undefined "local channel package", or simply add a digital tuner in the box in smaller markets and hope the customer can receive a signal. For those who live in outlying rural areas, tough luck. What could have been the most important public interest benefit of this merger turns out to be nothing more than a sham, and the Commission is going along with it, no questions asked.

It is especially demoralizing to know that my home town of Rapid City, South Dakota, television market #175, may never get its own local broadcasters beamed down from space. The loss to the citizens of Rapid City is emblematic of the problems so many communities will face for the foreseeable future. They may never receive high-quality satellite signals of their local news, weather, sports and other locally-based programming. Most importantly, people living in outlying areas like Kadoka, South Dakota, who cannot otherwise receive Rapid City broadcasts, will never receive them by satellite, and slapping an antenna on their dishes will offer them nothing.

We hear a lot of talk about localism. Here, we had the opportunity to do something about it. Instead, we let News Corp. gain all the benefits of this merger while asking them to do nothing in return for Rural America, or anyone else, for that matter. We abandoned Rural Americans to the fickle exigencies of the marketplace, with every assurance that it will fail to provide them the same quality of service enjoyed by their more urban counterparts.

By today's action, the FCC allows the ever-expanding tide of vertical and horizontal media concentration to intensify. It signals, yet again, the FCC's unwillingness to take a hard look at media consolidation. It vests more control of our nation's media in the hands of an already powerful media conglomerate. And it raises the compulsion for other companies to follow suit, to, so-to-speak, "keep up with the Murdochs."

This unprecedented combination could dramatically impact News Corp.'s programming and distribution rivals. It fundamentally alters the relationship of News Corp. to its rivals, as it now becomes a vertically integrated competitor to all other MVPDs in every single MVPD market, and the first of only two nationwide programming platforms to have its own programming. It increases the incentive and ability to act anticompetitively with respect to all rivals.

News Corp. is now in a position to distribute programs or sporting events either on its broadcast network, cable networks, regional networks, television stations, or even over pay-per-view. Imagine the increased bargaining power of News Corp. as it sits at various negotiating tables in these interconnected industries, finding itself on all sides at once, and with an increased arsenal of weapons against rival programmers or distributors. News Corp. will be in a position to demand higher programming fees or demand concessions without fear of losing distribution.

The Order does contain some useful protections. When a nationwide distributor merges with such a large programmer, there rightly should be consumer protections to prevent the vertically integrated company from withholding programming from rivals or offering it on discriminatory prices, terms or conditions. The parties' commitments, including abiding by our program access rules and other nondiscrimination safeguards, are positive steps which I am pleased are included as express conditions of approval.

The Order properly finds public interest harm involving even temporary foreclosure of retransmission consent of News Corp.'s broadcast television properties or contractual rights to carry Fox-controlled regional sports networks. The addition of DirecTV's nationwide platform increases the

second dish, unless they are willing to *pay* for placement on the main satellite. Recent reports have shown that very few consumers bother to acquire the second dish, which has meant that very few consumers can access these stations. Consumers and broadcasters deserve better, and the statute requires it.

It is important to emphasize that a DBS operator's roll-out of local-into-local stations need not be at the expense of public television, religious and Spanish language broadcasters. SHVIA does not hinder a DBS provider from expanding the markets – including rural markets – in which it carries local broadcast signals. The use of a second dish is a spectrum allocation issue. If DBS providers choose to use a “two-dish” solution to provide local broadcast service to more communities, compliance with the non-discrimination provision simply requires that all the local stations be treated similarly, whether they are placed on the main or wing satellite.

I, along with my colleague Commissioner Copps, continue to believe that this is a vital issue to all public, religious and Spanish-language broadcasters. I am disappointed that we were the only Commissioners willing to vote to clarify that DBS operators must place all broadcasters – or at least all public broadcasters – on the same dish. I also am disappointed that not one other Commissioner was even willing to address this fundamentally unfair policy and to clarify that these broadcasters are entitled to equal treatment under the law.

As my colleagues in the majority point out, this issue is the subject of an Application for Review that has been pending for over a year and a half, in which the Association of Public Television Stations challenges a Bureau decision that allows a DBS provider to place certain broadcasters on a second dish.⁵ Given the current legal status and the continued, prolonged absence of Commission action in that docket, and in the face of a direct request from the public broadcast community in this proceeding, I am uncomfortable avoiding this issue any longer. Moreover, the Order recognizes that this is a merger-specific issue: “We recognize that the proposed transaction may give DirecTV greater incentive to favor News Corp.’s Fox broadcast network programming and therefore to move other broadcasters onto other satellites.”⁶ I agree that this issue does raise merger-specific concerns.

Finally, I note that a clarification of the legal requirements of SHVIA’s non-discrimination provision here would be the industry-wide solution that some have called for. I fail to see why any Commissioner supportive of such a solution would not vote for that resolution when presented with that opportunity here.

⁵ See Association of Public Television Stations and the Public Broadcasting Service, *Application for Review*, CSR 5865-Z (May 2002), *National Association of Broadcasters and Association of Local Television Stations Request for Modification or Clarification of Broadcast Carriage Rules for Satellite Carriers, Declaratory Ruling and Order*, 17 FCC Rcd 6065 (MB 2002).

⁶ Order at para 273.

it is reasonable to assume that we are setting the stage for upward pressure on consumer rates. An entirely plausible outcome of this decision is escalating rates for multi-channel services from both cable systems and DirecTV. When faced with a similar scenario, the Federal Trade Commission in the Time Warner/Turner merger adopted a benchmark price index mechanism. Here, the majority dismisses such an approach, adopting instead so-called baseball arbitration. I am not convinced that arbitration has succeeded in bringing down costs in baseball. More to the point, this is not baseball and it is surely not a game. Although the majority allows the Commission to review the arbitration decisions, it then ties the Commission's hands by requiring us to choose between each party's final offer. This reduces the Commission's obligation to protect the public interest to a multiple choice test. Let's be clear here: what the arbitrators will most often be arbitrating are two companies' proposals about how much more programming is going to cost. The only question to be decided is: how much more. Payment for higher programming license fees will be borne, of course, by consumers.

Moreover, although the majority seems to recognize the possibility of increased consumer rates from this level of consolidation, it inexplicably provides a sunset for these conditions of six years. This sunset is adopted without any explanation of why the majority expects these harms to be resolved within that timeframe.

I am troubled by other aspects of this decision.

I am troubled by the lack of analysis on the foreign ownership implications of the transaction. In section 310(b) of the Act, Congress adopted a broad provision that limits the ability of foreign entities to own or operate parts of our communications system. This foreign ownership restriction applies across a broad range of communications services. For decades, the Commission applied these restrictions to DBS. Last year, with inadequate justification, the Commission determined that the foreign ownership restrictions in 310(b) should not apply to DBS. As a result, the majority, in approving this deal under which News Corp., an Australian company, purchases control of a U.S. DBS licensee, concludes that it need not consider the foreign ownership implications.

I am troubled by the majority's failure to consider the impact of this merger on minority communities. The Congressional Hispanic Caucus in a recent letter raised numerous serious issues related to the negative impact of this merger on the Latino community, on minority-owned independent programmers and on local and Latino-focused programming. The majority fails to do justice to these concerns.

I am troubled that the Commission is approving this merger without resolving issues specific to the Applicants that have been raised regarding service in Alaska and Hawaii. Parties have filed complaints that DirecTV fails to provide reasonably comparable packages of services to Alaska and Hawaii, as required by our rules. If these companies are violating Commission rules, we should address these issues as part of our public interest analysis.

Finally, I am troubled by the failure to clarify that DirecTV, or any other DBS provider, may not discriminate against some local broadcasters by requiring consumers to obtain a second dish to receive those broadcasters. In 1999, Congress passed the Satellite Home Viewer Improvement Act (SHVIA). That Act required that, if a provider carries any local broadcast signals, it must carry all local broadcast signals, and must do so at a nondiscriminatory price and in a nondiscriminatory manner. In 2002, Commissioner Martin and I issued a joint statement making clear our view that a plan to require

- This list constitutes News Corp's major holdings in the United States. This conglomerate also has massive media holdings in other nations spanning the globe.

When is "Big Media" big enough? With spectrum always scarce and diversity hanging by a thread, where is the logic -- where is the public interest benefit -- of giving more and more media power to fewer and fewer players? In the end, it all comes back to this: to putting too much power in one conglomerate's hands and creating opportunities for abuse that accompany such concentrated power. Any public interest benefits that may potentially come about from this huge consolidation of commercial power are vastly outweighed by the potential for significant harm to consumers, the industry and the country. I therefore dissent from allowing this merger to go forward.

The majority seems to recognize that the agreement that the parties presented to the Commission for approval was seriously flawed. But the majority's strategy to apply band-aids in several places to stem what is in fact a public interest hemorrhage did not -- because it could not -- work. This agreement was probably beyond repair. Certainly the band-aids applied by the majority don't fix it.

The Applicants point to several claimed public interest benefits of the proposed merger. Yet, even the majority discounts all but two of these benefits as not supported by the record. The majority relies on the potential public interest benefits of innovative services that will be offered under News Corp.'s management and on additional markets in which DirecTV will provide carriage for local television stations. As to the former, the majority admits it is difficult to quantify, but points to the innovative service offerings available on News Corp.'s satellite systems in other parts of the world which include interactive sports betting and casinos. As to the claimed second benefit, the major DBS providers have already been increasing their local station carriage for competitive reasons and, as several commenters point out, DirecTV is altogether able to expand those offerings without this merger.

The *Order* is even more telling in its handling of potential harms emanating from this transaction. The majority finds that News Corp. has market power in its programming services, that this transaction increases its ability and incentive to use its market power to raise programming costs, and that these increases would ultimately be passed on to consumers. Indeed, all of the Commissioners appear to agree that in the transaction, as proposed by the Applicants, the harms outweigh the benefits. In addition to my belief that the conditions imposed in this *Order* are not adequate to address the harms acknowledged by the majority, I am further concerned that the majority fails to acknowledge other real and potential harms associated with the merger. These include:

- **Media Concentration:** Although the majority at least attempts to address the harms of vertical integration, it dismisses outright horizontal integration harms that can arise from allowing one company to own broadcast outlets across the country *and* a nationwide multi-channel distribution system -- an unprecedented level of consolidation. Instead, the majority concludes that broadcast outlets do not serve the same market as cable and DBS. The majority further discounts any harms to localism or diversity, finding instead that market forces will ensure adequate sources of information. To trust that in the unforgiving environment of the market, the public interest will somehow magically trump the urge to build power and profit is a leap of faith that this Commissioner, for one, is unprepared to take. The majority ought to know better. This is the same flawed logic we saw in the Commission's June 2 decision. In addition, the majority fails to analyze the impact of this merger on ensuring independent and diverse programming. Alleged economies of scale do precious little to nurture program or viewpoint diversity.

**SEPARATE STATEMENT OF
COMMISSIONER KATHLEEN Q. ABERNATHY**

General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee, For Authority to Transfer Control, MB Docket No 03-124

I write separately to clarify my rationale for not supporting the imposition of a proposed condition to restrict DirecTV from segregating some, but not all, local broadcast stations to wing satellites. As the Order specifically states, "[w]ith regard to APTS/PBS's proposed condition to restrict DirecTV from segregating local broadcast stations to wing satellites, we recognize that the proposed transaction may give DirecTV greater incentive to favor News Corp.'s Fox broadcast network programming and therefore to move other broadcasters onto other satellites. There is not a majority to decide whether this increased incentive results in a merger specific harm."

I do not believe the issue is merger specific because any incentive to use wing satellites for some, but not all, broadcast stations is applicable to all DBS providers, not just News Corp. In fact, the National Association of Broadcasters and the Association of Local Television Stations filed a petition asking for modification or clarification of the Commission's rules regarding carriage of television broadcast stations by DBS providers in a manner that requires subscribers to obtain a second satellite dish antenna.¹ Since the Bureau's decision in that matter is subject to an application for review by the full Commission, I believe that this issue is best addressed in the context of that proceeding. In the interim, the Bureau's decision provides that if any DBS provider chooses to carry local stations using a second dish to receive some those stations, it must do so in a manner that does not violate Section 76.66 of our rules and Section 338(d) of the Communications Act.²

¹ See *National Association of Broadcasters and Association of Local Television Stations, Request for Modification or Clarification of Broadcast Carriage Rules for Satellite Carriers*, 17 FCC Rcd 6065 (MD, 2002)

² "[T]he satellite carrier shall retransmit the signal of the local television broadcast stations to subscribers in the station's local market on contiguous channels and provide access to such station's signals at a nondiscriminatory price and in a nondiscriminatory manner on any navigational device, on-screen program guide or menu. 47 U.S.C. Section 338(d).

valued programming during negotiations and arbitration. In addition, we ensure that News Corp.'s other affiliated programming will be offered to all MVPDs on a non-discriminatory basis.

Finally, this transaction will result in more local programming being carried by DirecTV in more local markets. In fact, as a condition of this license transfer, we mandate that the merged entity provide, by year end 2004, local channel service in an additional 30 DMAs beyond what had been previously funded, projected or planned by Hughes/DirecTV. As DBS providers continue to carry local broadcasting services to more and more Americans and in the process become a more effective competitor against cable, both of our collective localism and competition goals are enhanced. I share the desires of my colleagues to see more DBS providers carry local broadcast signals and local programming into more local markets—especially to rural America.³

In short, facilities-based competition among satellite and cable providers has led to more innovation, more programming and more subscribers. As a result of this transaction those trends, along with competitive prices and better quality of service will continue for the American public. I, therefore, approve this transaction, as conditioned, as I believe it serves the public interest.

³ With regard to APTS/PBS's proposed condition to restrict DirecTV from segregating local broadcast stations to wing satellites, I do not believe there is sufficient record evidence to suggest that there was a merger-specific public interest harm that called for the proposed condition. To the extent APTS/PBS advocated a further clarification of an interpretation of the nondiscriminatory local broadcast carriage provisions of SHVIA, I do not believe this question is best resolved in this license-transfer proceeding, but is better suited for a separate Commission review. As noted by APTS/PBS in their comments to this proceeding, the Commission will have this opportunity in considering the APTS/PBS Application for Review (*see* Application for Review of the Association of Public Television Stations and the Public Broadcasting Service, CSR-5865-Z (May 6, 2002)) of a previous Media Bureau interpretation of SHVIA. *See National Association of Broadcasters and Association of Local Television Stations Request for Modification or Clarification of Broadcast Carriage Rules for Satellite Carriers*, Declaratory Ruling and Order, DA 02-765 (Apr. 4, 2002). Until that time, DBS providers using a two-dish solution must do so consistent with Section 76.66 of our rules and Section 338(d) of the Communications Act.

SES-T/C-20030502-00588	PanAmSat Licensee Corporation <i>Call Sign(s)</i> : E010334; E970080 (Receive Only)
SES-T/C-20030502-00589	PanAmSat Licensee Corporation <i>Call Sign(s)</i> : E950067, E970051 (Transmit Only)
SES-T/C-20030502-00590	PanAmSat Licensee Corporation <i>Call Sign(s)</i> : E000048; E000049; E000063; E000274; E000363; E000364; E000488; E010019; E010112; E010113; E010131; E010133; E020309; E030012; E4132; E7465; E881286; E881304; E890530; E900089; E920340; E920377; E930088; E940333; E940368; E940532; E950267; E950307; E950502; E950508; E970352; E970391; E970392; E980460; E980467; E980501; E980502; E980503; E990024; E990091; E990092; E990093; E990214; E990223; E990224; E990323; E990334; E990363; E990364; E990365; E990433; KA244; KA245; KA391; KA450; KA71 (Transmit/Receive)
SES-T/C-20030502-00591	PanAmSat Licensee Corporation <i>Call Sign(s)</i> : E010118; E010280; E990055 (Temporary Transmit/Receive)
SES-T/C-20030502-00592	PanAmSat Licensee Corporation <i>Call Sign(s)</i> : E2178; E3943; E860175; E900621; E900757; KL92 (Common Carrier Transmit/Receive)
SES-T/C-20030505-00601	DIRECTV Enterprises, LLC <i>Call Sign(s)</i> : E950423; E950424; E980170; E980341 (Receive Only)
SES-T/C-20030505-00602	DIRECTV Enterprises, LLC <i>Call Sign(s)</i> : E930229; E930304 (Transmit Only)
SES-T/C-20030505-00603	DIRECTV Enterprises, LLC <i>Call Sign(s)</i> : E010129; E010130; E020172; E930191; E950349; E980285; E980338; E980340; E980473; E990159 (Transmit/Receive)
SES-T/C-20030505-00604	DIRECTV Enterprises, LLC <i>Call Sign(s)</i> : E990545 (Temporary Transmit/Receive)
SES-T/C-20030505-00605	DIRECTV Latin America, LLC (D-I-P) <i>Call Sign(s)</i> : E990232 (Transmit/Receive)
SES-T/C-20030505-00606	Hughes Communications Satellite Services, Inc. <i>Call Sign(s)</i> : E960001; E970079; E970094 (Receive Only)
SES-T/C-20030505-00607	Hughes Network Systems, Inc. <i>Call Sign(s)</i> : E861092; E873438 (Temporary Transmit/Receive)

File No. 0001293908 is the Lead File number for the wireless radio series of applications. The complete list of File Numbers follows:

Wireless Licenses:

File Number	Licensee/File Nos.
0001293908	DIRECTV, Inc. <i>Call Sign(s)</i> : WPTZ691 (IG)

proven unduly burdensome, rendering the condition no longer necessary in the public interest

Non-discriminatory Access to Local Broadcast Television Station Signals

- The non-discrimination commitments that News Corp. has proposed and we have imposed as conditions regarding access to non-discriminatory access to satellite cable programming networks are extended to any broadcast station that News Corp. owns and operates or on whose behalf it negotiates retransmission consent.

Good Faith and Exclusivity Requirements of SHVIA

- The good faith and exclusivity requirements of SHVIA, in effect by their terms until January 1, 2006, are extended to apply to retransmission consent negotiations undertaken by News Corp. for carriage of its local broadcast station signals so long as the program access rules are in effect.

VI. CONDITION TO INCREASE LOCAL-INTO-LOCAL BROADCAST TELEVISION SERVICE OFFERINGS

- By year end 2004, DirecTV must provide local broadcast channels to subscribers in an additional 30 designated market areas ("DMAs") beyond what had been previously funded, projected or planned by Hughes/DirecTV.
- In the event that circumstances beyond DirecTV's control limit its ability to fulfill this license condition, DirecTV may petition the Commission for waiver pursuant to Section 1.3 of the Commission rules, 47 C.F.R. § 1.3.

VII. CONDITIONS TO MITIGATE NATIONAL SECURITY, LAW ENFORCEMENT, FOREIGN POLICY AND TRADE POLICY CONCERNS

Pursuant to the request of the U.S. Department of Justice ("DOJ") and the Federal Bureau of Investigation ("FBI"), with the concurrence of the Department of Homeland Security ("DHS"),⁷ the transfer of control is conditioned on:

- GM causing Hughes to adopt, and Hughes adopting, prior to the closing of the subject transaction, the Hughes By-law Amendment;
- The adoption by the Board of Directors of News Corp. of the Proposed Resolutions; and
- Compliance by Hughes and News Corp., respectively, with the commitments set forth in the Hughes By-laws Amendment, the Proposed Resolutions, and the Letter Agreement.

⁷ See Petition to Adopt Conditions to Authorizations and Licenses (filed Nov 25, 2003) ("Petition to Adopt Conditions"); Appendix E.

Rules of Arbitration

- The arbitration will be decided by a single arbitrator under the expedited procedures of the Rules, excluding the rules relating to large, complex cases, but including the modifications to the Rules set forth in Appendix C.
- The parties may agree to modify any of the time limits set forth above and any of the procedural rules of the arbitration; absent agreement, however, the rules specified herein apply. The parties may not, however, modify the requirement that they engage in final-offer arbitration
- The arbitrator is directed to choose the "final offer" of the party which most closely approximates the fair market value of the programming carriage rights at issue.
- To determine fair market value, the arbitrator may consider any relevant evidence (and may require the parties to submit such evidence to the extent it is in their possession),⁵ including, but not limited to:
 - current contracts between MVPDs and Fox-affiliated stations on whose behalf News Corp. does not negotiate;
 - current contracts between MVPDs and non-Fox network stations;
 - offers made in the preceding negotiations (which may provide evidence of either a floor or a ceiling of fair market value);
 - evidence of the relative value of Fox programming compared to other network programming (e.g., advertising rates, ratings);
 - contracts between MVPDs and stations on whose behalf News Corp. has negotiated made before News Corp. acquired control of DirecTV as well as offers made in such negotiations;
 - internal studies of the imputed value of retransmission consent agreements in bundled agreements;
 - changes in the value of non-Fox retransmission consent agreements;
 - changes in the value or costs of Fox programming or broadcast stations, or in other prices relevant to the relative value of Fox broadcast programming (e.g., advertising rates).
- The arbitrator may not consider offers prior to the arbitration made by the MVPD and News Corp. for the programming at issue in determining the fair market value.
- If the arbitrator finds that one party's conduct, during the course of the arbitration, has been unreasonable, the arbitrator may assess all or a portion of the other party's costs and expenses (including attorney fees) against the offending party.
- Following the decision of the arbitrator, and to the extent practicable, the terms of the new retransmission consent agreement, including payment terms, if any, will become retroactive to the expiration date of the previous retransmission consent agreement. The MVPD will make an additional payment to News Corp. in an amount representing the difference, if any, between the amount that is required to be paid under the arbitrator's award and the amount actually paid under the terms of the expired contract during the period of arbitration.

⁵ We clarify that, by "possession," we mean actual possession or control.

- If the arbitrator finds that one party's conduct, during the course of the arbitration, has been unreasonable, the arbitrator may assess all or a portion of the other party's costs and expenses (including attorney fees) against the offending party.
- Following resolution of the dispute by the arbitrator, to the extent practicable, the terms of the new affiliation agreement will become retroactive to the expiration date of the previous affiliation agreement. The MVPD will make an additional payment to News Corp. in an amount representing the difference, if any, between the amount that is required to be paid under the arbitrator's award and the amount actually paid under the terms of the expired contract during the period of arbitration.
- Judgment upon an award entered by the arbitrator may be entered by any court having competent jurisdiction over the matter, unless one party indicates that it wishes to seek review of the award with the Commission, and does so in a timely manner.

Review of Award by the Commission

- A party aggrieved by the arbitrator's award may file with the Commission a petition seeking de novo review of the award. The petition must be filed within 30 days of the date the award is published.
- The MVPD may elect to carry the programming at issue pending the FCC decision, subject to the terms and conditions of the arbitrator's award.
- In reviewing the award, the Commission will examine the same evidence that was presented to the arbitrator and will choose the final offer of the party that most closely approximates the fair market value of the programming carriage rights at issue.
- The Commission may award the winning party costs and expenses (including reasonable attorney fees) to be paid by the losing party, if it considers the appeal or conduct by the losing party to have been unreasonable. Such an award of costs and expenses may cover both the appeal and the costs and expenses (including reasonable attorneys' fees) of the arbitration.

Provisions Applicable to Small MVPDs

- An MVPD meeting the definition of a "small cable company" may appoint a bargaining agent to bargain collectively on its behalf in negotiating carriage of RSNs with News Corp. and News Corp. may not refuse to negotiate carriage of RSN programming with such an entity.⁴ The designated collective bargaining entity will have all the rights and responsibilities granted by these conditions

Additional Provisions Concerning Arbitration

- No later than 20 business days prior to the expiration of an affiliation agreement with an MVPD for video programming subject to this condition, News Corp. must provide the MVPD with a copy of the conditions imposed in this Order. News Corp. must provide a copy of the conditions imposed in this Order within 10 business days of receiving a first time request for affiliation.

⁴ The Commission has previously defined small cable companies as those with 400,000 or fewer subscribers. We adopt that definition for the purposes of this condition. See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992*, 10 FCC Rcd 7393 (1995) ("Sixth Report and Order").

agreement with the DOJ, FTC or FCC, for the term specified by such consent decree, order or agreement.

- These program access conditions so long as the Commission has program access rules applicable to satellite cable programming vendors affiliated with cable operators.²
- For enforcement purposes, aggrieved MVPDs may bring program access complaints against Applicants using the procedures found at Section 76.1003, 47 U.S.C. § 76.1003, of the Commission's rules.

III. ADDITIONAL CONDITIONS CONCERNING ACCESS TO REGIONAL SPORTS CABLE PROGRAMMING NETWORKS

When negotiations fail to produce a mutually acceptable set of price, terms and conditions for carriage of a regional sports network ("RSN"), an MVPD may choose to submit a dispute to commercial arbitration in accordance with the following procedures:

Commercial Arbitration Remedy

- An aggrieved MVPD may submit a dispute with News Corp. over the terms and conditions of carriage of RSN programming in each region in which News Corp. owns or holds a controlling interest or manages any non-broadcast RSN.
- Following the expiration of any existing contract, or 90 days after a first time request for carriage, an MVPD may notify News Corp. within five business days that it intends to request commercial arbitration to determine the terms of the new affiliation agreement.
- Upon receiving timely notice of the MVPD's intent to arbitrate, News Corp. must immediately allow continued carriage of the network under the same terms and conditions of the expired affiliation agreement as long as the MVPD continues to meet the obligations set forth in this condition.
- Carriage of the disputed programming during the period of arbitration is not required in the case of first time requests for carriage.
- "*Cooling Off Period*" The period following News Corp.'s receipt of timely notice of the MVPD's intent to arbitrate and before the MVPD's filing for formal arbitration with the American Arbitration Association ("AAA") shall constitute a "cooling-off" period during which time negotiations are to continue.
- *Formal Filing with the AAA.* The MVPD's formal demand for arbitration, which shall include the MVPD's "final offer," may be filed with the AAA no earlier than the fifteenth business day after the expiration of the RSN contract and no later than the end of the twentieth business day following such expiration. If the MVPD makes a timely demand, News Corp. must participate in the arbitration proceeding.
- The AAA will notify News Corp. and the MVPD upon receiving the MVPD's formal filing.

² Although *most* of the program access rules will remain applicable unless terminated by Congress, Section 76.1002(c), the prohibition on exclusive contracts, sunsets in October 2007 unless the Commission finds that the prohibition continues to be necessary to protect competition in the distribution of video programming. See 47 C.F.R. § 76.1002(c)(2). In the year prior to the sunset, the Commission will conduct a proceeding to evaluate the circumstances in the video programming marketplace.